



Georgia Department of Early Care and Learning



CHILD CARE SERVICES

Provider Bulletin

Updates to Criminal Records Check Rules

The Facts

Bright from the Start: Georgia Department of Early Care and Learning (DECAL) recently adopted rules related to criminal records checks to align the rules with Georgia law brought about by the passage of Georgia House Bill 350 in 2013.

All providers, directors, and employees hired on or after January 1, 2014 are required to undergo a national fingerprint background check and obtain a satisfactory determination from DECAL before being present in a child care facility while any child is present for care.

All employees hired before January 1, 2014 will have to undergo a national fingerprint background check and obtain a satisfactory determination from DECAL by January 1, 2017. DECAL strongly encourages any individual who meets the definition of an employee and who could wait until January 1, 2017 under the law, to complete the fingerprint record check process as soon as possible.

Beginning January 1, 2019, every provider, director, and employee must have a satisfactory records check determination on file that has been issued within the past five years; a new fingerprint background check will be required every five years.

A copy of the satisfactory determination must be present in each director and employee's file.

Clarifications

The Process

To receive a determination from DECAL, all of the following must occur:

1. Individual must register online with COGENT;
2. Individual must pay the processing fee to COGENT;
3. Individual must have fingerprints scanned at a COGENT processing site;
4. Individual must submit a complete and notarized* application form to DECAL.

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*Note: Under Georgia law, the director cannot sign the application form and notarize the application form.

Portability

A Satisfactory Determination letter issued by DECAL may be taken by a director or employee to a new facility, as long as:

- it was issued within the immediate preceding 12 months of the hire date; and
- the Center/Provider does not know or reasonably should not know that the individual's satisfactory status has changed.

Defining Employee

To determine if an individual meets the legal definition of an employee and would be required to undergo a national fingerprint background check, apply the following test:

- An Employee is defined as anyone who:
 - A. Performs duties for the facility with or without compensation
 - AND
 - B. Involves personal contact with child(ren) in care
 - OR
 - C. Resides at the facility
 - Students-in-training are considered employees under the new law.
 - Independent Contractors and Volunteers who provide consistent services* are considered employees under the new law.

*“providing consistent services” is defined as any repeated arrangement that occurs more than once every three months.

Provisional Employees

- Provisional Employees are a new type of employee that has been defined by the updated rules.
- Provisional Employees must obtain a local name-based criminal records check before being hired (GCIC check, run under purpose code “W”, from local law enforcement).
- Directors/Providers must evaluate the record, make a determination, and mark on the local criminal history sheet if the individual has a satisfactory or unsatisfactory determination. The person making the determination can write directly on the RAP sheet (Record of Arrests and Prosecutions), "OK" or "SAT" or "Satisfactory" if the person is cleared to work. On the other hand, they should write something like "not OK" or "UNSAT" or "Unsatisfactory" if the person has a criminal history that bars them from being present in a child care facility while any child is present for care. The person making the determination should also sign/initial and date the notation.

- A Provisional Employee's local/GCIC records check must be run within the immediate preceding 10 days of his or her hire date by local law enforcement.
- A Provisional Employee may be employed for a period of not more than 21 calendar days (3 weeks) beginning from his or her hire date.
- The 21-day provisional employment period can be extended if the provisional employee submitted a completed, notarized application form to DECAL AND successfully submitted fingerprints under the proper reason code through COGENT.
- A Provisional Employee can transition to become a permanent employee if a satisfactory fingerprint records check determination has been completed during the period of provisional employment.
- When evaluating Provisional Employees and the 21-day period, DECAL will use the hire date in the individual's personnel file to determine when the 21-day period started.

Independent Contractors:

Use the following as guidance to determine if an independent contractor is required to obtain a national fingerprint background check.

1. New employees hired on or after January 1, 2014 are required to have a national fingerprint background check clearance. As an independent contractor, this requirement applies only if s/he begins to provide services to a new center after January 1, 2014 or if a center that s/he already provides services to does not have evidence of a local clearance obtained before January 1, 2014.
2. If an independent contractor has an established working relationship with a center that started before January 1, 2014 AND that center has a local criminal records check on file for her/him dated before January 1, 2014, s/he is considered a "current employee" under the new fingerprint law. This means that s/he is able to work with such a center under this local clearance until January 1, 2017 (at which time s/he will need to undergo the national fingerprint background check process).
3. NOTE: DECAL reserves the right under Georgia law to require an additional background check under certain circumstances, such as, but not limited to, during the course of an investigation of abuse. Additionally, DECAL strongly encourages any individual who meets the definition of an employee and who is permitted to wait until January 1, 2017 under the law to complete the fingerprint record check process as soon as possible.

Liability

- There is no limit to the number of employees or potential employees for whom a provider/facility can submit an application to DECAL for a national fingerprint background check clearance.
- A provider/facility will not be penalized for submitting an application for an individual who is deemed Unsatisfactory, unless the provider/facility allows that individual to be present while any child is present for care either:
 1. Before receiving any criminal record check; OR
 2. After receiving an Unsatisfactory determination.

Additional Resources

The following list of forms or resources will help you understand the new and revised rules.

Criminal Records Check Requirements for CCLC, GDCH, and FDCH Staff

Link- <http://www.decal.ga.gov/documents/attachments/CRCRequirements.pdf>

How to Read Preliminary Records Check Determinations

Link-

<http://www.decal.ga.gov/documents/attachments/HowtoReadPreliminaryRecordsCheckDeterminations.pdf>

The application form and instructions for fingerprinting are located at the following link:

<http://www.decal.ga.gov/ChildCareServices/CriminalRecordsCheck.aspx>

If you have questions about the revised criminal records check rules, child care licensing rules in general, or any issues relating to child care services, contact your licensing consultant directly or call our office at 404-657-5562.